



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

FILE

Date:

MAY 23 2001

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated on [REDACTED] as a [REDACTED] non-profit corporation. Your Articles of Incorporation state that you will be operated exclusively for charitable, educational, and scientific purposes; specifically, that you will be operated for the provision of educational and translation services to the Hispanic community at low or no cost in order to overcome language barriers; and for the provision of gift funds for down payment assistance to those attempting to purchase a home and the administration of a down payment assistance program for such purposes.

You state that you will provide educational and translation services to both culturally and economically challenged families at low or no cost to the recipients, assist such families to overcome language barriers in acquiring housing, and provide services designed to eliminate barriers to homeownership. You define "culturally challenged" to mean individuals who lack the communication skills to fully understand a typical real estate purchase transaction. You define "economically challenged" to mean individuals who earn less than the median average income established by the State's housing program.

Your primary source of financial support is from "donations" from individuals and organizations involved in the real estate market, including real estate brokers, title companies, and lending institutions. For a payment of \$[REDACTED], these organizations can "sponsor" a candidate for home purchase. You describe the sponsorship process as follows:

For every sponsor who donates \$[REDACTED] ... entitles them to receive lifetime benefits for real estate related need, resources, and assistance. The donor is also entitled to name one additional person to sponsor either now or at some time in the near future.

We ... consider a donor as a "donor-sponsor" of a candidate who wishes to purchase a home. The donation paid allows the "donor-sponsor" to receive lifetime services for its candidate that our company provides The candidate sponsored can either opt to purchase a home now or anytime in the future. The \$[REDACTED] will be credited at closing in either case. If the candidate does not wish to purchase a home at all, the \$[REDACTED] can be transferred to any other candidate that the sponsor so desires at any time in the future.

A candidate who wishes to buy a home first expresses an interest in our program. We explain the program in detail, inclusive of obtaining a donor-sponsor, a donation of \$[REDACTED] and the obligations and benefits therewith. If they are desirous in utilizing our program, we then get them started by receiving their authorization to pull credit and obtain ... a 2-year history of employment and residency. All this is done as a free service ... before any monies are donated. Upon analysis of this information by a competent loan officer, we receive a pre-approval for financing in writing by the lender. If the candidate is sufficiently satisfied that all conditions can be met, at that time we fill out all of the required forms and documents required by the lender for financing, and receive the donation monies. At that time, the "donor-sponsor" and the candidate are associated with Hace S.A. and are entitled to all of the benefits and services we provide.

Based on the sales price of the property selected, we then receive a "good faith estimate" from the lender showing forth all of the costs needed for that particular candidate to purchase the home, together with conditions of repairs ... for the property to meet ... the lender's requirements for financing. We pay for all of these costs at closing and also give the candidate the \$[REDACTED] credit against their purchase price. We elicit the same amount or more from the Seller as a donation which is disclosed as an amount that they may not be able to use as a charitable deduction while we are still applying for that status. This money is not directly used for the candidate, but is to replenish our coffers for the next candidate's use.

In every case we request a donation from the sellers of the home being purchased. We usually request at least the amount used for the candidate and more if the seller is willing to contribute to our program. The Seller is under no obligation to make a donation.

You provided us with various "exhibits" to assist us in understanding your activities. One such exhibit is a "Real Estate Purchase Contract." One of the terms that you have added to the form contract states:

Seller contributes \$[REDACTED] at closing to [REDACTED], a non-profit organization. Seller understands that the contribution will not be used to provide down payment nor closing costs assistance to the buyer. The contribution paid by seller is not deductible as a charitable contribution, and must appear on the settlement statement

at closing. Seller agrees to sign a [REDACTED] contribution agreement. [REDACTED] is not making a gift or donation to Buyer.

The "[REDACTED] Contribution Agreement" is a written contract between you and the home seller. Under the terms of contract, the seller makes a "contribution" to you in order to "qualify the Subject Property under [REDACTED]'s programs." The Agreement states that "seller ... understands that the seller is only making said contribution if a homebuyer utilizing [REDACTED]'s services purchases the Subject Property. Seller is not obligated to make the contribution if the escrow/closing is cancelled or terminated."

Your only directors and officers are [REDACTED] and [REDACTED]. In your letter of [REDACTED], you stated that the companies that [REDACTED] and [REDACTED] work for are among your Donor-Sponsors. As such, those companies will receive the same benefits from you that you provide to all of your donor-sponsors.


Section 501(a) of the Internal Revenue Code exempts from federal income taxation organizations described in section 501(c). Among the organizations described in section 501(c)(3) are those that are organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. It defines the term "charitable" as including the promotion of social welfare by organizations designed to relieve the poor and distressed or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Rev. Rul. 76-205, 1976-1 C.B. 154, provides that a nonprofit organization formed to aid immigrants in overcoming social, cultural, and economic problems by providing personal counseling, referrals to helpful agencies, social and recreational activities, instruction in English, and distributing a newsletter containing information on attaining citizenship, securing housing, and obtaining medical care is operated exclusively for charitable and educational purposes and qualifies for exemption under section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly by such private interests.


In Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Section 501(c)(3)-1(e)(1) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513 of the Code.

Section 513 of the Code provides that the term "unrelated trade or business" means any trade or business the conduct of which is not substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable purpose constituting the basis for its exemption under section 501.

Section 509(a)(2) defines a private foundation as any organization described in section 501(c)(3) other than one which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees; and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in an activity which is not an unrelated trade or business, and not normally more than one-third of its support from a combination of gross investment income and the excess of the amount of the unrelated business taxable income over the amount of tax imposed by section 511.

Rev. Rul. 65-299, 1965-2 C.B. 165, provides that a nonprofit organization formed to advise, counsel, and assist individuals in solving their financial difficulties, by budgeting their income and expenses and effecting an orderly program for payment of their obligations, is entitled to exemption from Federal income tax as a social welfare organization described in section 501(c)(4). The individuals and families eligible for assistance are not limited to those who are in need of such assistance as proper recipients of charity. No charge is made for the counseling service. However, a nominal charge is made for monthly prorating services to cover postage and supplies. The organization relies upon voluntary contributions from local businesses, lending agencies, and labor unions to cover its cost of operations.

Rev. Rul. 69-411, 1969-2 C.B. 115, provides that a nonprofit corporation formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems is exempt under section 501(c)(3). The organization's board of directors is comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions. It aids low-income individuals and families who have financial problems by providing them with individual counseling and by establishing budget plans. Under a budget plan, the debtor voluntarily makes fixed payments to the organization. The funds are kept in a trust account and disbursed on a partial payment basis to the creditors, whose approval of the establishment of

the plan is obtained by the organization. Services are provided without charge to the debtor. The organization's receipts are from contributions, primarily from the creditors participating in the organization's budget plans. However, the creditors are not required to make contributions as a condition of participation. By aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization is relieving the poor and distressed. Furthermore, by providing the public with information on budgeting, buying practices, and the use of consumer credit, the organization is instructing the public on subjects useful to the individual and beneficial to the community.

In Consumer Credit Counseling Service of Alabama, Inc. et al. v. United States, 44 A.F.T.R.2d (RIA) 5122 (D.D.C. 1978), the court allowed 501(c)(3) exemption to 24 credit counseling service agencies that operated in a virtually identical manner. They had two basic types of programs which constituted their principal activities: (1) providing information to the general public, through speakers, films, and publications, on consumer budgeting, buying practices, and use of credit; and (2) counseling debt-distressed individuals and families (not limited to low-income) on budgeting and use of credit. The agencies did not charge for these activities. The agencies also provided advice on debt proration and payment, whereby a program of monthly payments to creditors was developed and implemented, in which the creditors agreed to receive smaller monthly payments or total payments. A nominal fee was generally charged when the debt management program was undertaken (not exceeding \$10 per month), and was waived where it would cause financial hardship. The agencies' professional counselors spend about 12% of their time on the debt-management programs, and the balance on the activities described in (1) and (2) and general management. The agencies' support was provided by government and private foundation grants, contributions, and assistance from labor agencies and the United Way of America. The agencies received an incidental amount of revenue from counseling fees. At least 60% of each agency's board was representative of the general public. The court reasoned that the agencies need not limit their assistance to low-income individuals, that the debt management and creditor intercession activities were an integral part of the counseling services (and even if not, were incidental to their principal activities), and that the charge of a fee was not fatal to exemption.

In American Campaign Academy v. Comm'r, 92 T.C. 1053 (1989), the organization operated a school that trained persons for careers as professional staff in political campaigns. Most of the graduates of the school supported Republican Party candidates. The court concluded that the school provided substantial private benefit to Republican Party entities and candidates. In this case, the beneficiaries of the primary private benefit were the students, and the secondary private benefit went to the political candidates themselves, who employed the graduates. The Tax Court explained that the secondary private benefit accruing to the Republican political candidates caused the school to fail the operational test, "where the training of individuals is focused on furthering a particular targeted private interest, the conferred secondary benefit ceases to be incidental to the providing organization's exempt purposes."

You provide down payment assistance to homebuyers in need of language and translation assistance in the home buying process. You have not established that these buyers constitute

[REDACTED]

a charitable class of persons who are unable to afford the down payment or closing costs, or are otherwise in need of financial assistance.

Although you provide benefits to homebuyers who face language and cultural barriers, you also provide substantial benefits to your "donor-sponsors" and to home sellers. You are, therefore, like the organization in American Campaign Academy v. Comm'r, *supra*, which failed to qualify for exemption because it provided substantial benefits to private interests.

You refer homebuyers to real estate-related businesses and mortgage companies. Those companies then pay you a \$[REDACTED] "donation," and become "donor-sponsors." You then provide translation and other services to those donor-sponsors to facilitate their transactions with the homebuyers that you referred to them. Therefore, the \$[REDACTED] payments you receive from your donor-sponsors are not gifts for federal tax purposes, but, instead, are payments for services that are no different from those rendered by a for-profit trade or business. You are not like the organizations in Rev. Rul. 69-411 and Consumer Credit Counseling Service of Alabama, Inc. v. United States, *supra*. The credit counseling organizations in those cases received most of their support from voluntary contributions by creditors and the public. Creditors could participate in the repayment plans and receive payments regardless of whether they contributed to the organization. In your case, you do not provide services to the clients of a donor-sponsor unless the donor-sponsor pays you \$[REDACTED].

Likewise, you benefit home sellers by bringing them qualified buyers in exchange for a "donation," thereby increasing the market for the seller's home. Although you state that sellers are not required to make a "donation" to you, a contribution from the seller to you is a written term of the purchase contracts you present to sellers on behalf of your donor-sponsors' clients. Furthermore, a seller must sign a "contribution agreement" under which the seller makes a "contribution" to you in order that the seller's property qualify for your programs. Again, these "contributions" are not gifts for federal tax purposes, but are fees for providing the seller with qualified buyers.

Therefore, you are not operated exclusively for exempt purposes, but substantially for the benefit of your donor-sponsors and other private interests. Also, your primary purpose is the operation of an unrelated trade or business.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

We have also determined that you would not qualify as an organization described in section 509(a)(2) of the Code. Your income will be derived from the performance of services to real estate-related businesses and home sellers. Such services do not further a charitable purpose and are of the type normally engaged in as a trade or business on a for-profit basis. Therefore, the income from such services would not be deemed qualified support for the purposes of section 509.

[REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED] T:EO:RA:T:2
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

[REDACTED] [REDACTED]